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## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

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<b>2003 Senate Bill 272</b>	<b>Assembly Amendments 4 and 7</b>
<i>Memo published: March 9, 2004</i> <span style="float: right;"><i>Contact: David L. Lovell, Senior Analyst (266-1537)</i></span>	

2003 Senate Bill 272 relates to municipal cable, telecommunications and Internet access services.

**SENATE BILL 272, AS PASSED BY THE SENATE**

**Start-Up of Municipal Service**

***Basic Requirement***

The bill establishes procedures that a municipality (a city, village, or town) must follow before it may provide cable service, telecommunications service, or Internet access service. Before a municipality may enact an ordinance or adopt a resolution authorizing the construction, ownership, or operation of facilities for any of these services, the municipality must do all of the following:

1. Conduct a feasibility study of the proposed service, including a cost-benefit analysis covering at least three years. The bill specifies various costs that must be considered in the study.
2. Hold a public hearing on the proposed ordinance or resolution. It must provide notice and at least 30 days for public inspection of the feasibility study report prior to the hearing.

***Exemption If a Referendum Is Held***

If the Public Service Commission (PSC) has determined, on or before November 1, 2003, that the municipality is an alternative telecommunications utility (commonly referred to as being certified as a competitive local exchange carrier, or CLEC), the municipality may hold an advisory referendum on the question of supporting the proposed service. If a majority of voters vote in favor of the referendum, the municipality is exempt from the basic requirement described above.

### ***Exemption In Absence of Other Broadband Service***

If the municipality determines that no person that provides broadband service in the municipality provides service in the area where the municipality proposes to provide service, or plans to provide service there in the next nine months, the municipality is exempt from the basic requirement described above. The municipality is required to make written inquiries to each such provider. This exemption applies, also, if a provider indicates its intention to begin providing service in that area within nine months but does not do so. Note that this exemption applies only to the provision of broadband service and not to other telecommunications or cable services.

### **Subsidization of Municipal Service**

#### ***Cable Service***

The bill prohibits a municipality that provides cable service from requiring nonsubscribers of its system to pay any of the costs of the system, except that it allows a municipality to require nonsubscribers to pay costs related to public, educational, and governmental access channels and debt service for the system. This provision first applies to costs incurred on the effective date of the bill. Thus, it applies to all costs associated with new systems (those established on or after the effective date) and to all on-going costs of existing systems.

Exemptions similar to the exemptions from the basic requirement for start-up of a new service apply to this prohibition. If a municipality is certified as a CLEC as of November 1, 2003, and the voters of the municipality approve a referendum on the question, the municipality may subsidize the costs of the cable television system. If the municipality determines that there is no current or planned provision of broadband service, it may subsidize municipal delivery of broadband service via its cable television system.

#### ***Telecommunications Services (TSLRIC)***

Under current law, telecommunications utilities are prohibited from subsidizing unregulated activities with revenues from regulated activities. One mechanism used to prevent cross-subsidization is a requirement that all services be priced to exceed the cost of providing the service, termed the “total service long-run incremental cost” (TSLRIC). The TSLRIC requirement does not apply to small telecommunications utilities, those serving 150,000 or fewer access lines in this state. The Public Service Commission (PSC) may waive the TSLRIC requirement for any utility if certain criteria relating to competition and the general availability of service are met. It also may apply the requirement to small utilities by order.

The bill addresses how TSLRIC must be calculated for a local government telecommunications utility. In calculating TSLRIC, it requires a municipal utility to include costs that are incurred by nongovernmental utilities but that are not incurred by municipal utilities. Specifically, the municipality must take into account equivalent charges for all taxes, pole rentals, rights-of-way, licenses, and similar costs. The exemption for municipalities that are certified CLECs and that hold a referendum approving subsidization of municipal service applies to this requirement, also. The exemption for broadband service in the absence of any other broadband service does **not** apply.

The bill also provides that the exception from the TSLRIC rule for small utilities does not apply to municipal utilities. Similarly, the PSC may not waive the TSLRIC requirement for a municipal utility.

Note that the TSLRIC provisions of the bill do *not* apply to cable service or to broadband Internet access services, since these services are not a “telecommunications service, relevant group of services, [or] basic network function” (the precise terms used in the bill). For the same reason, these provisions do not apply to a municipality that establishes a “backbone” transmission facility on which other entities may provide service.

#### **Effective Date**

The bill takes effect on the first day of the third month beginning after publication.

#### **ASSEMBLY AMENDMENT 4**

Assembly Amendment 4 creates another exemption from the procedural requirements for new service and from the provisions regarding the calculation of TSLRIC, but *not* from the provisions related to cable television systems. The exemption applies to a municipality that offers use of the facility on a nondiscriminatory basis to persons who provide broadband service to end users and does not, itself, use the facilities to provide broadband service to end users--that is to say, a municipality that offers only wholesale service--if the municipality determines that the facility does not compete with more than one other provider of broadband service. Note that the exemption applies only to broadband service, and not to the other services covered by those parts of the bill.

#### **ASSEMBLY AMENDMENT 7**

Assembly Amendment 7 creates another exemption, which applies to the procedural requirements for new service, the provisions related to cable television systems, and the provisions regarding the calculation of TSLRIC. It provides that those provisions do not apply to a municipality that, on March 1, 2004, was providing cable television service. The two municipalities that were providing cable television service on March 1, 2004, are Oconto Falls and Reedsburg.

#### **LEGISLATIVE HISTORY**

On November 11, 2003, the Senate Committee on Energy and Utilities recommended introduction and adoption of Senate Amendments 1 and 2 and passage of Senate Bill 272, as amended, on separate votes of Ayes, 5; Noes, 0.

On November 13, 2003, the Senate adopted Senate Amendments 1 and 2 on voice votes and passed Senate Bill 272, as amended, on a vote of Ayes, 23, Noes, 9.

On February 17, 2004, the Assembly Committee on Energy and Utilities recommended concurrence in Senate Bill 272 on a vote of Ayes, 7; Noes, 5.

On March 2, 2004, on voice votes, the Assembly adopted Assembly Amendments 4 and 7 and ordered the bill, as amended, to a third reading. The Assembly refused to suspend the rules to give the bill its third reading at that time by a vote of Ayes, 58; Noes, 38.

On March 4, 2004, the Assembly concurred in Senate Bill 272, as amended, on a voice vote.

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